Opinion of the European Economic and Social Committee on the Proposal for a Regulation of the European Parliament and of the Council on cross-border payments in the Community

COM(2008) 640 final — 2008/0194 (COD)

(2009/C 228/11)

On 30 October 2008 the Council decided to consult the European Economic and Social Committee, under Article 95 of the Treaty establishing the European Community, on the

'*Proposal for a Regulation of the European Parliament and of the Council on cross-border payments in the Community*'

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 11 March 2009. The rapporteur was Mr BURANI.

At its 452nd plenary session, held on 24 and 25 March 2009 (meeting of 24 March 2009), the European Economic and Social Committee adopted the following opinion by 178 votes to three, with one abstention.

1. Conclusions and recommendations

1.1 The Committee welcomes the broad thrust of the Commission proposal, which aims primarily to extend the range of transactions covered by the regulation on cross-border payments systems to direct debits. Broadly speaking, this initiative ties in with the Commission's policy of aiming to ensure that cross-border payments in the euro area are viewed and treated in the same way as national payments.

1.2 There is some cause for debate owing to the fact that cross-border direct debits are more costly than equivalent transactions at national level. For this reason, and in the interests of transparency, the EESC would urge the Commission to provide information on the details, methodology and sources of the studies it has referred to in order to reach its various conclusions. Knowledge of the facts is a prerequisite for balanced decision-making.

1.3 It should be also be noted that should the regulation enter into force on 1 November 2009 as proposed, there will not be much time for drafting economic plans, and that this cannot be done without legal certainty regarding the Multilateral Interchange Fee (MIF).

1.4 The proposal also contains two requirements for Member States: the first is to establish an authority responsible for payments systems if no such authority already exists, the second is to put appropriate structures in place for dealing with complaints. The EESC believes that the majority of countries have had structures of this kind in place for some time. In such cases, it warns against creating new structures that would duplicate or overlap with the functions carried out by pre-existing structures.

1.5 A further request to the Member States concerns the adoption of 'effective, proportionate and dissuasive penalties' for failure to comply with or violations of the provisions of the regulation. The EESC is in agreement, but would point out that information on the comparative study of measures taken in the various countries would give an idea of how seriously each Member State is treating the regulation.

1.6 The regulation applies only to countries belonging to the monetary union; countries outside the euro area may choose to apply it to their own currency. The fact that no country has taken up this possibility gives food for thought as to the degree of interest in the usefulness of such initiatives on the part of the various countries.

2. Introduction

2.1 Regulation (EC) No. 2560/2001 on cross-border payment systems in the Community has been in force since 31 December 2001. It provides for the cost of a cross-border payment in any Member State to be the same as that of a corresponding payment made internally. The regulation applies to credit transfers, electronic payments, card payments of any kind and ATM cash withdrawals. The Commission's proposal extends the regulation's scope to include direct debits, improves the system for dealing with complaints and simplifies the statistical reporting system and should enter into force on 1 November 2009.

2.2 The Commission's goal is to improve the functioning of the internal market when it comes to euro payment systems in order to ensure that domestic and international transactions are subject to the same rules, bringing savings and benefits to both consumers and the economy in general. The settlement of disputes requires careful attention in order to address the points made by consumer associations, while statistical reporting entails a heavy administrative burden and high costs for credit institutions.

2.3 The EESC welcomes the Commission's initiative and agrees with its broad thrust, while seeking to make a useful contribution to the discussion in the form of a few comments and suggestions.

3. **General comments**

3.1 In response to pressure exerted by the Commission over the years, the banking sector has established the infrastructure for the Single Euro Payments Area (SEPA), which is now working well, both technically and organisationally and in bringing the charges for international payments down to the same level as those for national payments. The Commission states that the regulation 'can therefore be considered as the inception of SEPA'.

3.2 The achievements so far are clearly cause for satisfaction. There do however remain basic concerns as to their **compliance with the general principles of the single market.** SEPA is aimed primarily at resolving the issue of **payments in euros**. Countries that are not part of the euro area will not benefit except for payments made using the single currency. Since enlargement, it could be said that today SEPA covers **the majority of intra-Community flows: as part of a variable speed internal market**.

3.3 Secondly, **parity** in terms of national and international conditions **applies only within each individual country**. The differences between countries remain and in some cases are not insignificant. However the differences between the euro area countries as a whole and those outside are even greater. The regulation currently in force provides for countries outside the euro area to adopt this option voluntarily, but few have taken up the offer as yet. The overall result is that there is **still a long way to go to achieve reasonable convergence of prices within the EU.**

3.4 Discussion of price convergence does not necessarily imply a goal of price uniformity. A positive step could be taken, however, in terms of transparency and in response to consumer expectations were each country to conduct a careful **cost comparison:** there are major differences in infrastructure costs, tax and social charges, organisational expenses and the ratio between national and international volumes. An analysis of this kind might also provide useful indications on the wisdom of the decision to include *all* cross-border electronic payment instruments in the regulation.

4. **Specific comments**

4.1 Article 1(3) excludes from the regulation payments made by payment service providers *for their own account*. Services provided for **other payment service providers** should also be excluded. The Commission has stated that the provisions should be understood in that way. That being the case, the EESC would suggest that the wording should be clearer and believes that it would be counterproductive were the freedom to provide services directly between professionals not extended to other professionals using professional intermediary services.

4.2 Article 2(1) specifies that the regulation refers **exclusively to electronic means of payment**: paper-based payment instruments such as cheques and drafts are therefore excluded. The EESC agrees with this decision, but would point out that the differences in commission applied in the various countries for these forms of payment, which are now in decline, are too great to be justified on the grounds simply of cost. In some countries for instance, high charges may appear to be designed not only to cover costs, but also to **dissuade** people from continuing to use paper-based means of payment in the electronic age: this is a measure that the EESC supports.

4.2.1 Article 2 should include a paragraph to clarify the concept of 'electronic payment' referred to in paragraph 1. In view of the cost of mixing techniques and in line with established practice, the new paragraph should state explicitly that **electronic payment should not involve paper-based procedures**.

4.3 Article 1(2) introduces an innovation: the application of the regulation to cross-border payments up to a level of EUR 50 000 will include **all electronic payment instruments, including direct debits.** The EESC does have some reservations regarding the latter instrument.

4.3.1 The SEPA system for direct debits is different from the individual national systems and is more complex and sophisticated. Bringing the price of international direct debits into line with national prices could undermine the principle according to which a product or service cannot be sold below cost price. Furthermore, credit institutions often offer their own clients the direct-debit system, used by companies but not individual consumers, at favourable rates for promotional reasons. The conditions for national transactions are calculated to cover costs with low margins but cannot be extended to the more costly international transactions. The EESC would suggest that **direct debits should be temporarily excluded from the regulation**, with the proviso that they can be introduced if an independent expert report shows that there is no risk of distorting prices and competition.

4.3.2 In any event, in the interests of the basic principle of transparency, the Commission ought to publish its survey, in particular details on national and international costs, and clearly indicate how and on the basis of which sources and using which methodologies the information was collected and processed. In the absence of this information, it is difficult to take a proper stance without it appearing to be preconceived and unbalanced.

4.3.3 In addition, the EESC would draw attention to the fact that the new regulation should enter into force on 1 November 2009. This deadline may prove too short for medium- and long-term economic plans to be drawn up. Legal certainty regarding the Multilateral Interchange Fee (MIF) is an essential prerequisite for the drafting of these plans.

4.4 Article 3 confirms the principle established by the regulation currently in force: charges on **cross-border payments must be the same as those that every service provider applies** for the corresponding domestic transactions. The rule laid down in 2001 appears to have been satisfactorily observed, but a survey in the field would suggest that there is a **serious divergence in many countries between the charges on transfers in euros and those on other currencies**. This is discrimination against citizens living outside the euro area.

4.5 Article 5 introduces an important innovation: the obligation to **report transfers** of up to EUR 50 000 is removed as of 1 January 2010 and of any amount as of 1 January 2012. This requirement, intended as a means of collecting the data necessary for balance of payments accounting, was a source of confusion and was costly. The Member States will be able to collect the information via other systems. The EESC thoroughly approves of this provision.

4.6 Article 6 states that Member States are to appoint the authorities responsible for ensuring the regulation is applied: this preexisting requirement generally seems to be observed. More significant is the rule set out in Article 7, which states that Member States must set up **procedures for dealing with complaints** and the out-of-court settlement of disputes, providing the public with adequate information. These tasks may be taken on by new ad hoc or existing bodies. The EESC agrees, but only for countries where such structures do not yet exist, warning against the danger of creating new structures with responsibilities that overlap with those of existing structures. It would point out that, in any case, little is known of the workings of these bodies or, more importantly, of the number, nature and outcome of cases dealt with. The lack of complete and transparent information makes it difficult to carry out a **serious study of the nature and real number of cases of non-fulfilment**.

4.7 Article 10 provides for Member States to impose '**effective, proportionate and dissuasive**' penalties on those who do not observe the obligations imposed by the regulation, informing the Commission of the provisions made. In this respect as in the previous point, the interested parties must receive **adequate information**, if for no other reason than to **assess the importance given by each Member State to observance of the regulation**.

4.8 Article 11 extends to Member States outside the euro area **the possibility of applying the regulation to their own currency**. This would do away with the inconveniences and discrimination highlighted by the EESC in point 4.6. It would, appear, however that the reaction of the various Member States to this proposal has been somewhat lukewarm when not entirely absent. The EESC would prefer not to comment on this aspect, but calls on the Commission to think carefully about the supposed popularity of certain options.

4.9 The regulation should enter into force on 1 November 2009. The Commission is to present a report on the working of the IBAN and BIC codes by 31 December 2012 and a report on the application of the regulation by 31 December 2015. The EESC has no comment to make here, other than to repeat the requests made in points 4.6 and 4.7 regarding more comprehensive information for the interested parties.

Brussels, 24 March 2009.

The President
of the European Economic and Social Committee
Mario SEPI